

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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STEVEN HICKS,

Plaintiff,

v.

KATHLEEN HARTMANN, et al.,

Defendants.

Case No. 3:12-cv-00369-MMD-VPC

ORDER ACCEPTING REPORT AND  
RECOMMENDATION

Before the Court is Magistrate Judge Valerie P. Cooke's Report and Recommendation ("R&R") (dkt. no. 5), regarding Plaintiff Steven Hicks' Complaint and application to proceed *in forma pauperis*. (Dkt. no. 1.) Plaintiff did not file an objection but did file a Motion to Extend Time after the period for filing an objection had elapsed. (Dkt. no. 6.)

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. See *United States v.*

1 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review  
2 employed by the district court when reviewing a report and recommendation to which no  
3 objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.  
4 Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that  
5 district courts are not required to review "any issue that is not the subject of an  
6 objection.").

7        Though Plaintiff did not file an objection, the Court finds it is appropriate to review  
8 the R&R *de novo*. The R&R recommends that the Court grant Plaintiff's application to  
9 proceed *in forma pauperis* and dismiss the Complaint with prejudice. The R&R says that  
10 Plaintiff fails to state a claim upon which relief may be granted. Upon review of the R&R  
11 and the record, the Court determines that the R&R's finding is correct and the Complaint  
12 should be dismissed. The Court agrees that the Complaint fails to identify a clear legal  
13 basis for its claims. Even reading the Complaint in a light most favorable to Plaintiff, the  
14 Court cannot identify any federal constitutional or statutory rights implicated in Plaintiff's  
15 allegations. Further, the Complaint does not allege that the Defendants were acting  
16 under color of state law. As such, the R&R is correct that the Complaint fails to state a  
17 claim under 42 U.S.C. § 1983.


18        In his Motion to Extend Time, Plaintiff states that he has received new evidence  
19 that will allow him to better articulate his civil rights claims. (Dkt. no. 6 at 3-4.) As Plaintiff  
20 is proceeding *pro se* and has not filed an amended complaint in this action, the  
21 Complaint will be dismissed but Plaintiff will be granted leave to file an amended  
22 complaint. Plaintiff's Motion to Extend Time is otherwise moot to the extent it seeks more  
23 time to object to the R&R or provide the Court with additional evidence. Plaintiff may  
24 provide additional evidence in his amended complaint, should he choose to file one.

25        It is hereby ordered that the R&R (dkt. no. 5), is adopted in part and rejected in  
26 part. Plaintiff's application to proceed *in forma pauperis* (dkt. no. 1) is granted. The  
27 Complaint (dkt. no. 1-1) is dismissed without prejudice. Plaintiff is granted leave to file an  
28 amended complaint within fourteen (14) days of this order.

1 It is further ordered that Plaintiff's Motion to Extend Time (dkt. no. 6) is denied as  
2 moot.

3 The Clerk is ordered to file the Complaint. The Complaint is dismissed without  
4 prejudice.

5 DATED THIS 6<sup>th</sup> day of December 2013.

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9 MIRANDA M. DU  
10 UNITED STATES DISTRICT JUDGE  
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